

### **REMARKS**

These remarks respond to the Final Office Action mailed on July 15, 2005 . Claims 1-40 remain pending in this application. Claims 1-12 are allowed. Reconsideration and allowance of claims 13-40 are respectfully requested.

#### **§102 Rejection of the Claims**

Claims 13-17, 19-24, 27-32, 34-37, 39 and 40 were rejected under 35 U.S.C. § 102(b) for anticipation by Haber.

Applicant respectfully traverses the rejection and requests reconsideration as follows. The rejection asserted that U.S. Patent 4,846,784 to Haber provides, among other things, providing a flowable material from a source into the port portion in fluid communication with the expandable element, and at a location separate from the expandable element and cites Col. 5, lines 38-51 and FIG. 9 of the Haber patent. Applicant respectfully submits that the cited portion of Haber does not show what was asserted, and indeed, shows providing a flowable material directly to the expandable element. This is evidenced by the cannula 4 of Haber delivering fluid directly to the balloon 2 in FIG. 9. This evidence was presented to the Board of Patent Appeals and Interferences and was not controverted by the Board in the appeal preceding this Final Office Action. See Decision on Appeal, Appeal No. 2004-1462, January 26, 2005, at least at pp. 6-7 and p. 9. Applicant believes that the language set forth in the Amendment filed May 3, 2005, clarifies the recited subject matter and is therefore patentable.

Reconsideration and withdrawal of the rejection under 35 U.S.C. Section 102 are respectfully requested.

#### **§103 Rejection of the Claims**

Claims 18 and 33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Haber and further in view of Andino et al.

Claim 26 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Haber as applied to claim 13 above, and further in view of Whitehouse et al.

Applicant respectfully traverses for at least the reasons set forth above. Reconsideration and withdrawal of the rejection under 35 U.S.C. Section 103 are respectfully requested.

*Allowable Subject Matter*

Applicant notes the allowance of claims 1-12.

Claims 25 and 38 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant believes that the claims are allowable as being dependent on claims believed allowable for at least the foregoing reasons.

Reconsideration and allowance of claims 25 and 38 are respectfully requested.

RESPONSE UNDER 37 CFR § 1.116 – EXPEDITED PROCEDURE

Serial Number: 09/477,977

Filing Date: January 5, 2000

Title: IMPLANTABLE DEVICE AND METHOD FOR ADJUSTABLY RESTRICTING A BODY LUMEN

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Dkt: 825.001US2

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6912 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.


Respectfully submitted,

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By their Representatives,

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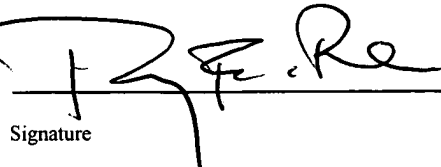
Date Jan. 16, 2006

By   
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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 16TH day of January, 2006.

TIMOTHY E. BIANCHI

Name

  
Signature